

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5938 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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HITESH RAJNIKANT SOPARIVALA

Versus

POLICE COMMISSIONER

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Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Surat city, Surat, passed an order in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short 'the PASA Act'], dated 15th February 1999, detaining the petitioner under the provisions of the PASA Act.

2. In the grounds of detention, the detaining

authority took into consideration, an offence registered against the detainee, so also the statements of two witnesses in respect of unregistered offences. The detaining authority recorded a subjective satisfaction that the incidents cited by these two witnesses were correct and that the fear expressed by the witnesses from the detainee was genuine and therefore, it was necessary to claim privilege of not disclosing the identity of the witnesses, in exercise of powers u/s 9[2] of the PASA Act. The authority also considered the possibility of resorting to alternative less drastic remedy and ultimately, came to conclusion that, in order to immediately prevent the petitioner from pursuing his illegal and anti social activities, he is required to be detained under the provisions of the PASA Act.

3. The detainee has challenged the order of detention by this petition under Article 226 of the Constitution of India and has raised many grounds. One of the grounds is that the representation against the detention made on behalf of the detainee has not been considered by the Government expeditiously and without delay.

4. Mr. Quereshi, learned advocate appearing for the petitioner has restricted his argument to this ground alone. He has produced on record a reply received by the detainee from the Home Department rejecting the representation dated 19/2/99 made on behalf of the detainee by his wife.

5. Mr. Joshi, learned AGP has opposed this petition. He submitted that the representation made on behalf of the detainee was expeditiously considered. There is nothing on record to show that the representation dated 19th February 1999 was in fact received by the authority concerned of the State Government, on that day or immediately thereafter and therefore, the petition on this ground, cannot be entertained.

6. Now, the fact remains that a representation was made on behalf of the detainee by his wife and that the representation was dated 19th February 1999, as can be seen from the reply by the Home department addressed to the detainee, which is produced on record by the learned advocate for the petitioner. However, on pointedly being asked, Mr. Joshi, after referring file, states that the representation by the wife of the detainee was received by the department on 23rd February, 1999, and the same was decided on 6th March 1999. Mr. Joshi tried to explain the delay from 23rd February 1999 to 6th March 1999 by

stating that the file reveals that the file was lying for approval of detention on 23rd February 1999 when the representation was received. the file also indicates that the detention was approved by the Government on 24th February 1999. In this event also, there is a delay from 24th February 1999 to 6th March 1999.

7. There is, no affidavit in reply, filed by the respondents and the lapse of time between 23rd/24th February 1999 to 6th March, 1999 is not even attempted to be explained. This inaction or delay of about 10 - 11 days on part of the Government, reflects that the authority was not live to the fact that it was a question of a liberty of the citizen under detention.

8. In view of the aforesaid, the petition is allowed. The impugned order of detention passed by the Commissioner of Police, Surat city, Surat, dated 15th February 1999 in respect of the petitioner Hitesh Rajnikant Soparivala, is hereby set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[ A.L.DAVE, J. ]

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